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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of

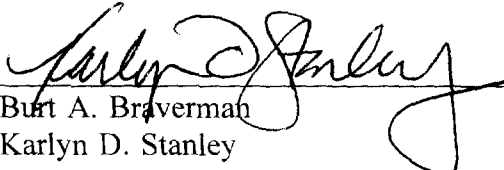
Carriage of the Transmission of Digital Television  
Stations

Amendments to Part 76 of the Commission's Rules

CS Docket 98-120

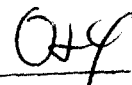
**COMMENTS OF THE INTERNATIONAL CHANNEL,  
TV 5, TV ASIA, RAI INTERNATIONAL, THE FILIPINO CHANNEL  
AND ARAB RADIO AND TV**

**INTERNATIONAL CABLE CHANNELS  
PARTNERSHIP, LTD., d/b/a/ THE  
INTERNATIONAL CHANNEL, TV5 USA, INC.,  
d/b/a TV 5, ASIA STAR BROADCASTING, INC.,  
d/b/a TV ASIA, RADIOTELEVISIONE ITALIANA  
d/b/a RAI INTERNATIONAL, ABS-CBN  
INTERNATIONAL, INC., d/b/a THE FILIPINO  
CHANNEL AND ARAB RADIO AND TELEVISION**

  
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Dated: October 13, 1998



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The International Channel, TV 5, TV Asia, RAI International, The Filipino Channel, and Arab Radio and TV (collectively, "the Commenters") submit these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceedings.

**I. INTRODUCTION.**

The Commenters are foreign-language program networks that provide programming directed to one or more ethnic communities in the United States. The Commenters each contribute to meeting the programming needs of the more than 30 million American citizens and residents who speak a foreign language at home, needs that are not met by mainstream broadcast and cable programming.

To fulfill this purpose -- and, indeed, to remain economically viable -- the Commenters must secure carriage on an adequate number of cable systems around the country. Unfortunately, their ability to do so is threatened by the prospect of a Commission ruling requiring cable operators to devote even more of their scarce channel space to pre-existing, mainstream broadcast video programming. This problem would arise if the Commission were

to require cable operators to carry *both* an analog *and* a digital version of over-the-air signals during the transition to ubiquitous digital television broadcasting. There is a danger, in short, that the Commission could inadvertently sacrifice its long-held goal of diversity in programming -- which is finally on the verge of being realistically fulfilled with the development of program networks such as the Commenters -- for no better reason than to ease the transition of the already-profitable broadcast networks to the equally (if not more) profitable world of digital television.

It may be tempting to downplay the difficulties of the transition period from analog to digital broadcasting, and to focus on a future world where all programming is predominantly digital and the "standard" cable system has evolved into a 750 MHz, 70+ channel two-way fiber-coax network. In such a future world, the Commenters are confident that their carefully targeted programming would appeal to enough cable subscribers in enough areas that carriage would be easily arranged, subject only to normal cable operator/programmer business negotiations.

But the *reality* today is that the Commenters face a cable market in which the average cable system carries fewer than 54 channels. This is the market that will be confronted with whatever digital must-carry obligations the Commission chooses to establish, and these are the cable systems that must make the difficult decision about which non-mainstream programming to drop if the existing over-the-air broadcasters are suddenly permitted to double or triple the number of channels that a cable operator must devote to them. While the Commenters are confident that many cable operators will retain their programming in preference to other niche-market and emerging channels, the raw and uncompromising economics of the situation dictate the conclusion that many cable operators will be forced to drop the Commenters' programs to make room for additional must-carry signals. Many other cable operators that soon would have begun to distribute the Commenters' programming will be precluded from doing so.

"The Commission has long recognized that cable television's multi-channel capacity makes it singularly suited to provide an abundance of diverse programming not otherwise obtainable . . . [T]he promotion of programming diversity is one of the fundamental goals of a

national communications structure that cable development should further."<sup>1</sup> This fundamental goal cannot be achieved if channel-locked cable operators are forced to carry both digital and analog channels for the same broadcaster. In this proceeding, therefore, the Commission should reject any alternative that would reduce the total number of different cable program networks that cable operators can offer their subscribers. Just as the Commenters trust that the marketplace will, over time, recognize their contributions to the chorus of voices that make up American video programming, so too should the Commission trust the marketplace to determine the pace and method by which cable operators convert from carrying analog to digital television signals.

These Comments will demonstrate that a digital must-carry rule would sever the links many millions of Americans have with their ethnic communities, and would destroy the benefits of the Commission's years of support for programming diversity. As further explained below, a digital must-carry rule would leave millions of Americans unserved or underserved. Therefore, the Commenters urge the Commission to not impose any digital must-carry rule, especially one that would reduce the number of channels available for digital and analog carriage of niche cable program networks.

## **II. THE PUBLIC INTEREST IS SERVED BY PROMOTING THE AVAILABILITY OF DIVERSE VIEWPOINTS SUCH AS THOSE OFFERED BY THE COMMENTERS.**

Chairman Kennard has succinctly stated that "we must stay focused on two key aspects of the public interest: promoting competition and promoting diversity."<sup>2</sup> In recent months, the Chairman has emphasized the continuing importance of efforts to better serve ethnic minorities in the U.S. population that have traditionally been underserved or unserved by mainstream television. For example, just this month, he stated that "with the growth of digital technology and the Internet, we truly are seeing a revolution in the industry, but if we can't make it work

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<sup>1</sup>*Amendment of Part 76, Subparts A and D of the Commission's Rules and Regulations Relative to adding a New Definition for "Specialty Stations" and "Specialty Format Programming" and Amending the Appropriate Signal Carriage Rules*, 36 RR 2d 781 at para. 21 (March 10, 1976).

<sup>2</sup>Press statement of FCC Chairman William E. Kennard Regarding Launch of Biennial Review of Broadcast Ownership Rules, issued March 12, 1998.

for all Americans it will be a failed revolution."<sup>3</sup> As described below, the Commenters are playing an increasingly important role in meeting the strong public interest in programming that directly serves the needs of an increasingly diverse American viewing audience.

The Commenters' contributions to true programming diversity are especially important in light of the recent decision by the D.C. Circuit in the *Lutheran Church* case. The Court held that the FCC's basis for its EEO program, which was characterized as fostering "diverse programming," was insufficient to satisfy the compelling interest standard required by *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).<sup>4</sup> The impact that the *Lutheran Church* decision will have on programming diversity remains to be seen, but it certainly did not enhance diverse programming efforts. The decision may, in fact, be used to justify more "majority" programming -- the inevitable outcome of a digital must carry requirement. Even so, the Supreme Court has held that, "[s]afeguarding the public's right to receive a diversity of views and information over the airwaves is . . . an integral component of the FCC's mission." *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 548 (1990).

**A. Diverse Programming, Including Programming Directed Towards Different Ethnic Communities, Serves The Public Interest.**

The foreign-born population in the United States is expected to grow to more than 31 million by the year 2010, according to a recent survey by Analysis and Forecasting, Inc. of Cambridge, Massachusetts. The Census Bureau's 1990 survey showed that already, more than 31 million members of the population currently speak a language other than English at home.<sup>5</sup> (See Attachment A) These 31 million Americans are not well-served by mainstream American television, including news programs in English. The Census Bureau information demonstrates that these individuals are better served by foreign-language channels such as TV 5 (French),

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<sup>3</sup>William E. Kennard, Chairman of the Federal Communications Commission, in *Broadcasting & Cable*, Oct. 5, 1998 (cover story) at p. 28.

<sup>4</sup>See *Lutheran Church v. FCC*, 141 F. 3d 344, 351 (D.C. Cir. 1998).

<sup>5</sup>U.S. Bureau of the Census, 1990 Census of Population, CPHL-133, Table 5, "Detailed Language Spoken at Home and Ability to Speak English for Persons 5 Years and Over--50 Languages with Greatest Number of Speakers."

RAI (Italian). ART (Arabic), TV Asia (Hindi, Gujarati) and the Filipino Channel (Tagalog), and the International Channel (28 languages).

Mainstream television does not reflect the growing multicultural aspect of America. Nearly 42% of Latino viewers say they never see characters of their own ethnicity on English-language entertainment programs, while fewer than 40% see a Hispanic anchor or newscaster on the English-language news program they watch most frequently, according to a study by the University of Illinois for the Tomas Rivera Policy Institute.<sup>6</sup> One television industry professional, who is also a minority, stated, "the invisibility of Latinos in film and on television can be summed up by the fact that space aliens and extinct dinosaurs have more screen and air time."<sup>7</sup> Recently, actor Jimmy Smits, Chairman Kennard and Commissioner Tristani outlined to reporters the importance of minority representation to children. They highlighted findings from a Children Now study that found that of all ethnic groups, Hispanic and Asian children had the most difficult time finding positive role models on television.<sup>8</sup> The comments of an industry member support these findings, especially concerning Asian-Pacific American women. She stated, "[b]ecause Asian Pacific American women are almost non-existent in the media, it is no wonder they are an oddity in real life to many Americans. If they do appear on screen, they are usually subservient sex objects who do nothing to move the plot."<sup>9</sup> Clearly, there is an important role for foreign-language channels that offer a wealth of positive programming about members of different ethnic communities.

Foreign-language channels, in short, address a growing portion of American society. These channels serve not only the foreign born, but also Americans of any birth nation who speak -- or have an interest in speaking or learning -- these languages. Indeed, these channels

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<sup>6</sup>*Latinos Satisfied, Dissatisfied with TV*, Broadcasting & Cable, October 5, 1998 at p. 47.

<sup>7</sup>Charles Floyd Johnson and Diane Kerew, The Caucus for Producers, Writers and Directors, *Minorities in Television: An Open Letter to the Caucus*, Vol. XI, Number 2, Summer 1993 (quoting Richard Thigues in a report on June 3, 1993 Committee on Minorities meeting with the Affirmative Action Department of the Screen Actors Guild.)

<sup>8</sup>As reported in Multichannel News, June 29, 1998.

<sup>9</sup>See *supra*, ftnt. 6, quoting Sumi Sevilla Haru.

provide a "window on the world" in a way that traditional American network or cable programming can never accomplish. On the International Channel, for example, the nightly French news at 7:00 p.m. (subtitled in English) is followed by the German Journal (in English) at 7:30 p.m. Discussions of world news, as well as U.S. news, from other viewpoints are thus available to American audiences.

Diversity of television programming has been a long-standing goal for Congress and the Commission.<sup>10</sup> In addition, Congress and the Commission have sought to foster new programming services and to protect them from being squelched by regulation. For example, in adopting the horizontal ownership limitations in Section 633, Congress directed the Commission not to impose "limitations that will impair the development of *diverse* and high quality programming."<sup>11</sup> The Commission recently acknowledged the potentially chilling effects of regulation on the development of diverse, high-quality programming when it expanded the exemption from closed captioning requirements for new programming networks.<sup>12</sup> Similarly, in 1994, the Commission recognized the unintended negative impact of its initial rate regulations on the development of diverse programming services and took steps to correct that problem.<sup>13</sup>

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<sup>10</sup>For example, Title VI states that a primary objective is to "assure that cable communications provide and are encouraged to provide the *widest possible diversity* of information sources and services to the public." 47 U.S.C. §521(4) (emphasis added.) Similarly, when it adopted the Cable Act of 1992 Amendments, Congress reiterated its policy objective to ". . . promote the availability to the public of a *diversity* of views and information through cable television and other video distribution media." Further, Congress directed the Commission to adopt regulations in order to promote "the public interest . . . by increasing competition and *diversity* in the multichannel video programming market and the continuing development of communications technology." 47 U.S.C. § 521(4) (emphasis added).

<sup>11</sup>47 U.S.C. § 533(f)(2).

<sup>12</sup>*In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, FCC 98-236 at para. 54 (rel. Oct. 2, 1998).

<sup>13</sup>*See Waiver Of The Commission's Rules Regulating Rates For Cable Services*, 11 FCC Rcd 1179 (1995); *Sixth Order On Reconsideration (Rate Regulation)*, 10 FCC Rcd. 1226 (1994) at ¶ 22.



**B. The Commenters Are Serving Communities That Are Not Addressed By Other Programming.**

As described below, the Commenters each provide a unique programming service devoted to the needs of a particular ethnic or linguistic community within the U.S. -- needs that are not being addressed by other programmers.

**1. TV Asia Serves New Americans From The Indian Subcontinent.**

Asia Star Broadcasting, Inc., provides TV Asia, North America's first coast-to-coast entertainment and information channel for the community from the Indian subcontinent. This channel is dedicated to bringing the South Asian-American community together by delivering high quality programming and news from both the U.S. and the Indian subcontinent. TV Asia airs regularly scheduled programming in Hindi, English, Gujarati and other regional languages, 24 hours a day, seven days a week.

TV Asia was launched in June 1998, and is broadcast via a Telstar-5 satellite. The footprint covers the continental United States, Alaska, Hawaii, Puerto Rico/US Virgin Islands, Mexico, Southern Canada and the Caribbean. Since TV Asia was established in the United States, it has been available through C-Band Satellite System, MMDS, DirecTV and cable. TV Asia has an agreement with the International Channel to be a South Asian channel for its International Premium Networks digital platform of ethnic services aimed at cable penetration in the U.S. TV Asia's appeal is based on its wide range of programming, including news and educational programs, as well as drama, films and music.

TV Asia serves a community of over 2 million former subcontinent citizens who are now U.S. residents. This community is highly educated, culturally diverse, multi-lingual, professionally motivated and one of the fastest growing ethnic populations within the United States, increasing between 1980 and 1990 by 110%. According to the Washington-based Center for Immigration studies, a remarkable two-thirds of all Indian professionals have advanced degrees, while almost 91% have at least a four-year college degree.

This highly educated community particularly enjoys news coverage. For example, the Indian election coverage by TV Asia gained an extensive audience. TV Asia has worked with major news organizations, such as Reuters, to uplink the latest news on a same-day basis. TV Asia has local news gathering crews in all major metropolitan areas and areas of population concentration of South Asian immigrants. In addition, TV Asia offers the following news-related programming:

- *Face-to-Face*, a program that features interviews with prominent personalities in all walks of life,
- *Around Our Community*, a local news program that features stories about Indian-Americans and their communities in the U.S.;
- *Made in the USA*, a program that features success stories of immigrants.

In brief, TV Asia's programming is of interest to over 2 million South Asian-Americans who cannot obtain similar programs on mainstream American television or cable.

## **2. The Filipino Channel Serves The Second Largest Asian Group In The U.S.**

Filipinos represent the second largest Asian group in the United States, with a population of 1,406,770, according to 1990 U.S. Census data. (Chinese-Americans ranked first, with a population of 1,645,472.) Based on U.S. Census projections, it is estimated that the U.S. Filipino population will be over 2 million by 1998.

The Filipino-American population tends to be highly concentrated in certain geographic areas. 71% of the U.S. Filipino population is located in the Western states with 8% in the Midwest, 11% in the South and 10% in the Northeast. California is home to more than half of the US Filipino population. Cities with large Filipino populations include Los Angeles, San Francisco, San Diego, New York, Honolulu and Chicago.

Filipinos are the second largest immigrant group in the United States, after those who arrive from Mexico. 1990 US Census research shows that 68.4% of the population speaks a

language other than English in the household. 35.6% claimed that they did not speak English "very well" and 13% were described as "linguistically isolated."

Filipinos in America have the second highest median household income among Asians (Asian Indians ranked first.) The highest percentage (36.7%) of Filipinos worked in a technical, sales or administrative capacity; 26.6% are classified as managers and professionals; and 16.8% work in the services industry.

ABS-CBN International, Inc. launched The Filipino Channel on April 3, 1994. It is the only Tagalog-language premium programming service in North America. The channel originates live from Manila 24 hours a day, and provides newscasts, dramas, films, and other entertainment from the top-rated network in the Philippines. The channel is now seen in approximately 43,500 households and is delivered via cable in some markets and on direct-to-home satellite across North America. The Filipino Channel also offers its subscribers a 24-hour news channel (Sarimanok News Network) and a 24 hour movie channel (Pinoy Blockbuster Channel.) Programming on the Filipino Channel is 90% in Tagalog and 10% in English.

### **3. RAI International 'Brings Italy To The World And The World To Italy.'**

RAI International is the international branch of Radiotelevisione Italiana, Italian public television. The current service was launched in 1996, although RAI has provided a service to the Italian community abroad since 1970.

The number of Americans of Italian ancestry is over 13 million. According to 1990 Census data, the number of Americans who speak Italian at home is approximately 1.5 million. Of these, 72% live in the Northeast, 10% in the Pacific region, 7% in the Southeast, 7% in North Central, 2% in South Central and 2% in the Mountain region. New York, New Jersey, California and Pennsylvania are the states where Italian is spoken most frequently at home.

RAI presents extensive news coverage, with reports and in-depth features. RAI's news presents an account not only of domestic political, economic and social events, but also of broader European and world events, portraying the Italian point of view on the events reported.

At present, RAI's programming is almost exclusively in Italian; however, beginning in the last quarter of 1998, RAI will subtitle about 20% of its programming into English. The goal is to increase that figure to about 50% - 70% of the programming in the medium-long run. Subtitles will assist RAI with its mission of demonstrating the richness of the Italian cultural tradition to non-Italians. RAI hopes that American colleges and universities will thus be able to use its programming more broadly.

Distribution of RAI so far has been restricted to DBS (EchoStar). This means that RAI cannot be distributed effectively in large U.S. metropolitan areas like New York City, because of the presence of very large buildings. As described above, the Italian-American population lives primarily in large urban centers. For this reason, RAI has sought carriage on cable systems. Although there is abundant interest in the channel, RAI has been advised that its inclusion in a cable operator's lineup is contingent on the introduction of the new digital platform.<sup>14</sup> Recently, RAI concluded a carriage deal with the International Channel, which should enhance its base of approximately 2,000 subscribers.

#### **4. ART Reaches Arab Americans Across The United States.**

ART (Arab Radio and Television) was launched in the U.S. in 1996, and offers a wide selection of Arabic cultural and Islamic general entertainment programs. ART programming, including Arabic and international movies, is carefully selected and produced to cater to Moslems and Arabs across the U.S. The programming differs markedly from the violent and sexually explicit fare offered on much mainstream programming.

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<sup>14</sup>See *infra*, ftnt. 18.

ART's goal is to link Arab communities to their homeland with programming in their own languages. Programming highlights include entertainment, dramas, sports and movies as well as coverage of national events, festivals and religious celebrations. ART also focuses on the younger generation of Arab Americans, offering broadcast language lessons and learning programs. ART is committed to delivering a cultural message to Arab Americans, 24 hours a day.

Demographic data indicates that the rate of growth of the U.S. Arabic-speaking population is very dynamic. California, New York, Michigan and New Jersey are the states with the most Arabic-speaking populations. Although the 1990 Census data shows only 355,150 Arabic speaking Americans, that number has been eclipsed in the past 8 years. ART has approximately 30,000 subscribers and the number is growing vigorously.

#### **5. TV 5 Serves The Third Largest Language Community In America.**

TV 5, provided by TV 5 USA, Inc., is aimed at the millions of people living in America who speak the French language, and who are interested in the culture it represents. French is the third most spoken language in the U.S., after English and Spanish. Fourteen million people living in this country are of French origin, of which more than 2 million speak French at home. It is also one of the most studied languages in the U.S.—some 13,000 professors teach French to 1.3 million students each year. 55,000 Americans belong to French-related clubs and associations across the nation.

TV 5 became available to American consumers nationwide via Echostar's DISH network in January 1998, and it currently seeks carriage on cable systems. TV 5 is a global television network, currently broadcasting in over 100 countries to an audience estimated at 72 million households. The service was created in 1984 to offer a window into the richly diverse cultures of the French-speaking world through a partnership between public and private broadcasters in France, Belgium, Switzerland and Canada (including French-speaking Quebec).

TV 5 viewers enjoy programming tailored especially for the U.S., with strong emphasis on news, movies and dramatic series, culture, adventure, travel, entertainment and lifestyle shows. News is an especially important program category, and TV 5, both domestically and across the entire global network, is unique for the multi-national perspective it offers. With news and talk shows fed daily from at least four countries, TV 5's viewers can gain a broad understanding of major new events. TV 5 also offers coverage of people and places often overlooked by the American press, such as coverage of African affairs or the European trade community. Whether they are in business, politics, or just interested in the world, TV 5 is an important resource for people looking for a global perspective. In addition, TV 5 has developed an extensive set of teaching guides that can be used in conjunction with the films and series broadcast on TV 5. TV 5's global reach is unparalleled by anything on "mainstream" U.S. television.

#### **6. The International Channel's Mission Is To Address Multiple Communities.**

International Cable Channels Partnership, Ltd., provides the International Channel, which was launched on July 3, 1990. The International Channel is the only national cable network dedicated to in-language international programming. It offers daily programming in 28 languages to over 8 million subscribers. The International Channel received the Los Angeles area Emmy Award for its U.S. Citizenship Special — *A Dream Come True*, and was a 1998 Beacon Award Finalist.

The International Channel fulfills the viewing needs of the rapidly growing American ethnic population. Over 30 million Americans speak a foreign language at home, and over 15 million new immigrants to the United States are integrating into American society and culture, while maintaining their ties with their homeland. International Channel programming offers news from France, Scandinavia, Hungary, Romania, Poland, Greece, Russia, Italy, Germany, Iran, Vietnam, China, Taiwan, Japan, India, Korea and the Philippines. It offers sports from around the world as well as movies, music, special programming and events such as programming for the Chinese and Indian New Year, and original programming such as:

- *US Citizenship: A Dream Come True*

- *Sharing Hope: Facing Breast Cancer (for Breast Cancer Awareness Month)*
- *Carved in Silence (documentary about Chinese immigrants on the "Ellis Island of the West")*
- *Back to Angel Island (immigration documentary)*

Drama and variety programs are offered in all featured languages.

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The breadth of the programming and the diversity of the viewpoints presented by the channels described above are staggering, especially when compared to U.S broadcast networks. These are the voices that face the prospect of being silenced if digital must-carry rules are adopted.

### **III. THE COMMENTERS MUST HAVE ACCESS TO CABLE CHANNEL CAPACITY IF THEIR DIVERSE PROGRAMMING IS TO REMAIN AVAILABLE.**

Carriage by cable operators is essential if Commenters' diverse programming is to remain available to the large and growing ethnic and language communities to which that programming is directed. Cable is less expensive and more practical than satellite dish delivery systems, and statistics show that far fewer homes have satellite dishes than cable. Unfortunately, approximately two-thirds of the nation's cable systems are channel-locked.<sup>15</sup> As of the fourth quarter of 1997, 60 percent of cable systems had fewer than 54 channels, and over 40 percent of cable subscribers were served by such systems.<sup>16</sup> Although capacity may increase eventually through cable upgrades, this will require great expense and years to accomplish. Regulatory requirements have further reduced channel availability, with analog must-carry and retransmission requirements, as well as public, educational and governmental ("PEG") channel requirements, consuming a substantial number of channels.<sup>17</sup>

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<sup>15</sup>NPRM at ¶ 45.

<sup>16</sup>NCTA Cable Book at 11; *see also* NPRM at ¶ 45.

<sup>17</sup>*See* 47 U.S.C. §§ 534, 531.

For example, Cable TV Arlington, located just outside of Washington, D.C., offers a "preferred service" (CPST) of 57 channels, of which 7 are PEG channels.<sup>18</sup> (Basic service of 27 channels also includes 7 PEG channels.) Of the system's 64 total channels, up to 33 percent (21 channels) must be provided to analog broadcast stations that qualify for must-carry. In addition, up to 7 channels must be set-aside for commercial leased access (15 percent of non-must-carry channels, presuming 33% of must carry at full capacity). *This leaves only 22 channels on the preferred service for which more than 250 cable networks (including national basic, regional and pay services — along with the Commenter's diverse programming) must compete.*

One of the Commenters, the International Channel, has been pushed to commercial leased access carriage, for which the network must pay the operator, because of existing must-carry requirements in both Northern and Southern Manhattan. Time Warner's New York City system, which is fully channel locked, offers subscribers a 31-channel basic service tier. Fourteen of those channels are must-carry analog broadcast signals, and nine are PEG or leased access channels. That leaves only eight channels on the basic tier, all of which, according to Time Warner's Chairman, "would have to be dropped if the system is required to double the number of channels carrying broadcast services in order to comply with a digital must-carry requirement," in addition to six services on the CPS tier that would also have to be dropped.<sup>19</sup>

These problems are directly relevant to all of the Commenters.<sup>20</sup> For example, although New York City has the largest concentration of Italian-speaking Americans in the U.S., what is the likelihood that RAI International (the Italian Channel) will obtain carriage if a digital must-carry requirement is imposed?

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<sup>18</sup>One of the PEG channels is currently shared by a satellite cable network.

<sup>19</sup>Joseph J. Collins, Chairman and CEO Time Warner Cable, before the Committee on Commerce, Science and Transportation, United States Senate, Washington D.C., July 8, 1998 (Transition to High Definition Television).

<sup>20</sup>RAI International has been advised by numerous cable operators in the Northeast (including Time Warner in New York City) that, although the operators would be interested in carrying the Italian Channel, they cannot do so because of their current channel-locked situation.



#### **IV. DIGITAL MUST-CARRY WOULD UNNECESSARILY JEOPARDIZE THE COMMENTERS' ABILITY TO BECOME AND REMAIN COMMERCIALY VIABLE.**

New, niche-directed programming networks such as the Commenters would be severely harmed by a reduction in channel availability on cable systems. A digital must-carry requirement threatens to reduce existing channel capacity substantially, and to force cable operators to replace developing, niche networks—such as Commenters—with duplicate broadcast signals. Clearly, such a result is contrary to the public interest.

The Commenters have already learned that the relatively few cable operators that have remaining channel capacity are being cautious about adding any new programming services. For example, a major cable operator has expressed concern about its ability to continue to carry the International Channel if a digital must-carry rule is adopted. Even if some broadcasters are not required to transmit a digital signal until 2003, the top 30 markets, which serve 50% of the viewers, must begin transmitting right away. The top 30 markets reflect the largest metropolitan areas in the United States, which have the greatest proportion of new immigrants and ethnic communities.<sup>21</sup> Thus, ethnic communities would be likely to feel the effect of a digital must-carry rule swiftly. Even if a digital must-carry rule were implemented on a rolling basis, cable operators in smaller markets probably would grow increasingly reluctant to offer carriage to niche programming networks as the digital transition dates applicable to their markets approached.

Channel-locked systems are not going to drop established channels such as ESPN or Disney to accommodate digital must-carry. As explained above, Commenters have already learned that they will likely be among the first channels to be dropped if there is a digital must-carry requirement.<sup>22</sup> Moreover, the chances for developing networks such as the Commenters to gain access to whatever channels remain would be minimal. After all, hundreds of networks are likely to be competing for that limited channel space.

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<sup>21</sup>See *infra*, pp. 6 - 12.

<sup>22</sup>See *infra*, p.14 (International Channel).

In these circumstances, a digital must-carry requirement would inevitably jeopardize the financial viability of many niche networks. The affected networks would have to cut back or halt their investment in quality, original programming. Inevitably, many would ultimately fail. In fact, many emerging foreign language networks would never have the chance to get off the ground, and any plans to begin developing other new networks certainly would be scrapped.

## **V. CONSUMERS WILL SUFFER THE BRUNT OF ANY MUST-CARRY RULE.**

American consumers will be the ultimate losers if cable systems are forced to set aside additional channels to broadcasters. Few consumers, especially new immigrants, will have the financial or technical ability to view HDTV anytime soon. The reasons are obvious. First, in order to receive the digital signal over cable, subscribers must purchase a new digital television set. These sets, which presently are available in only a few major United States cities, cost between \$5,500 and \$12,000.

A new television set is not the only equipment required to join the world of digital TV. Consumers will also need a special cable box to receive the signal and a special "fire wire" to connect the receiver with the digital TV. This "fire wire" is not even available yet. The bottom line is that, without all of this equipment plugged in and working, a consumer will see either a blank TV screen or a second analog version of the broadcast station.<sup>23</sup>

Even the high-end user who can afford to purchase all of the equipment necessary to tune in to digital TV will not benefit from digital must-carry. Initially, stations will broadcast only one or two hours of programming per day in HDTV format.<sup>24</sup> Even after broadcasters are transmitting most of their signal in digital format, the high-end cable viewer will still likely be

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<sup>23</sup>Joseph J. Collins, Chairman and CEO Time Warner Cable, before the Committee on Commerce, Science and Transportation, United States Senate, Washington D.C., July 8, 1998 (Transition to High Definition Television); *see also* NPRM at ¶25 n. 77.

<sup>24</sup>Glen Dickson, *ABC Taps Tieman for DTV Gear*, Broadcasting & Cable, July 27, 1998, at 10, 11 (HDTV programming to be transmitted only in prime time).

receiving two channels with identical content — one in digital and one in analog. In short, consumers will receive unnecessary, duplicate signals.

On the other hand, millions of new Americans will be deprived of a connection to their homeland and their ethnic community if two channels with identical content replace their foreign language channels. These Americans will then be unserved by mainstream television. Moreover, all Americans will lose the benefit that diverse programming provides for the overall environment for news, information, and education. Rules with this impact simply would not benefit all Americans.

## **VI. NEW SWITCH TECHNOLOGY WOULD PROMOTE MIGRATION TO DIGITAL TRANSMISSION WHILE PRESERVING CUSTOMER CHOICE.**

The adoption of digital must-carry requirements would be particularly unjustified because the benefits of the digital platform can be obtained without sacrificing diversity of programming and consumer choice. Available technology enables both cable and non-cable viewers to receive digital broadcast signals over the air. Today's A/B switches permit cable television viewers to switch to an over-the-air broadcast signal using a cable compatible remote control.<sup>25</sup> Moreover, antenna equipment has improved dramatically, and initial tests indicate that HDTV may be received over the air using antennas.<sup>26</sup> Consumers who wished to receive HDTV signals off the air would need to purchase a digital television set with a receiver, any necessary equipment to receive the signal off the air (such as an antenna), and a remote control with a switching mechanism. The A/B switch will already be in the set. The cost of this equipment would *not* be substantially greater than the cost of the equipment needed to receive the HDTV signal over the cable system. Indeed, the cost of the antenna needed for over-the-air reception would be relatively minor compared to the cost of the digital television set and

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<sup>25</sup>See NPRM at ¶ 16 ("[T]elevision reception via antennas has been made easier and more convenient than was the case earlier this decade. Legal barriers to over-the-air reception of broadcast signals, caused by restrictions on antenna placement, have been reduced because of the over the air reception device preemption provisions of the Telecommunications Act of 1996. Input selector ("A/B") switches, which allow the subscriber to switch between cable and an antenna, may now be built into television receivers and can be easily controlled from a TV remote control device.")

<sup>26</sup>See Communications Daily, July 31, 1998 at 9.

receiver, which would be needed for either reception mode.<sup>27</sup> This switching mechanism will allow consumers to enjoy digital transmissions while preserving their access to diverse programming.

## **VII. THE COMMISSION CAN PRESERVE PROGRAMMING DIVERSITY BY ALLOWING THE MARKET TO SHAPE DIGITAL BROADCASTING.**

As Chairman Kennard has pointed out recently, the pace of the transition from analog to digital television will be determined by private-sector industries and the consumer market.<sup>28</sup> Rather than implementing a draconian digital must-carry rule, the Commission should allow consumers to shape the transition to a digital viewing world. Just as consumers have shaped the provision of online services with their use of the Internet, American consumers can assist the transition to DTV. The Commission should avoid promulgating any digital must-carry rule until outstanding technical issues are resolved, the average consumer realistically can receive HDTV, and industry players have had an opportunity to negotiate carriage agreements. This would also allow Commenters to obtain carriage as cable networks upgrade and more channels become available.

The Commission currently lacks adequate information to impose a digital must-carry requirement that will have a tremendous impact on many industries. As Chairman Kennard commented, "some companies are not going to make it in the digital age. Anytime you have a transforming technology in this country, you have winners and losers."<sup>29</sup> In light of the Chairman's remarks and the Commission's recent decisions, it seems obvious that the marketplace, rather than a regulatory body, should determine the winners and the losers. The

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<sup>27</sup> The cost of an antenna is estimated to be several hundred dollars, compared to the \$5,500 to \$12,000 cost of the HDTV set.

<sup>28</sup> Speech before the International Radio and Television Society, as reported in *Multichannel News*, September 21, 1998, p. 66; *see also* Statement by FCC Chairman William Kennard on Digital Television Transition released Oct. 6, 1998 ("the pace and direction of the transition to digital TV will be set by the private sector, by the marketplace and by competition.")

<sup>29</sup> *Id.*

Commission has acknowledged the importance of developing a record in this proceeding.<sup>30</sup> Yet, many questions concerning the transition from analog to digital broadcast transmission simply cannot be answered before the Commission renders its decision. For example, it is still unclear whether broadcasters will use their free spectrum to transmit one HDTV signal, multiple Standard Definition signals, other information, or a combination of both. Without this information it is impossible to assess the full impact of digital must-carry on cable system channel capacity and competing cable programming networks. In addition, important technical issues must be resolved, including interoperability of broadcast stations and cable systems.<sup>31</sup> The Commission recognized the unsettled state of digital broadcast television in its NPRM.<sup>32</sup>

Many additional questions simply cannot be answered during the comment period for this proceeding. For example, the length of the analog-digital transition period is uncertain. Although the Commission's rules set a "target" date of 2006 for return of broadcasters' analog spectrum, broadcasters and legislators have already expressed skepticism about whether the spectrum will be returned. In fact, Senator McCain was quoted as saying that "I will not see the return of spectrum in my lifetime."<sup>33</sup> Congress' decision to create a waiver process for broadcasters not ready to give back their analog spectrum only adds to the uncertainty.<sup>34</sup> In fact, the transition may take over a decade to complete. The Commission will need facts that

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<sup>30</sup>NPRM at ¶ 16.

<sup>31</sup>See, e.g., Leslie Ellis, *Kennard Urges HDTV Action*, Multichannel News, Aug. 17, 1998, at 65 ("one vital piece [of the relationship between high definition pictures and digital television sets] is missing: the protocols that allow digital sets to receive HDTV pictures even if cable boxes don't support all of the HDTV formats"); Leslie Ellis & Ted Hearn, *McCain Vents Over "Fire-Wire" Conflict*, Multichannel News, July 20, 1998, at 10 (noting that "[Chairman] Kennard suggested that the fire wire debate had to be settled before digital-signal-carriage rules were adopted").

<sup>32</sup>See, e.g., NPRM at ¶ 18 ("how the multiple technical systems [broadcast transmission, cable transmission and television receivers] will function in a digital environment *remains to be seen*. We note that the various technical elements involved in digital broadcast signal carriage are constantly in flux as technology advances.")

<sup>33</sup>*More Must Carry Madness: Roll Up The Sleeves on Firewall, Then Pontificate*, CableFAX Daily, July 13, 1998, at 1.

<sup>34</sup>*Balanced Budget Act of 1997*, Pub. L. No. 105-33, 11 Stat. 251 (1997).

will only be available in the future in order to assess the long-term impact of a digital must-carry requirement on cable television programming choices for consumers.

At an absolute minimum, the Commission should wait to review these facts to determine what Commission action is really needed. To do otherwise may do far more harm than good in the promotion of digital broadcast television. The Commission should allow the marketplace to determine the pace of the transition to digital television, rather than impose an artificial regulatory solution.

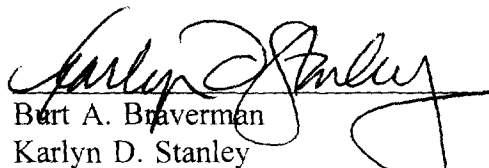
## **VIII. CONCLUSION.**

The Commission should preserve programming diversity by developing a flexible approach to digital broadcast issues that will allow consumers, not regulators, to determine how the market for digital transmission develops. A digital must-carry rule that would sever the links many millions of Americans have with their ethnic communities in the name of "progress" should be shunned. Such a rule would destroy the benefits of the Commission's years of support for programming diversity, and would leave the programming needs of millions of Americans unserved or underserved. For these reasons, the Commenters respectfully request that the Commission not impose any digital must-carry rule, especially one that would reduce

the number of channels available for digital and analog carriage of niche cable program networks.

Respectfully submitted,

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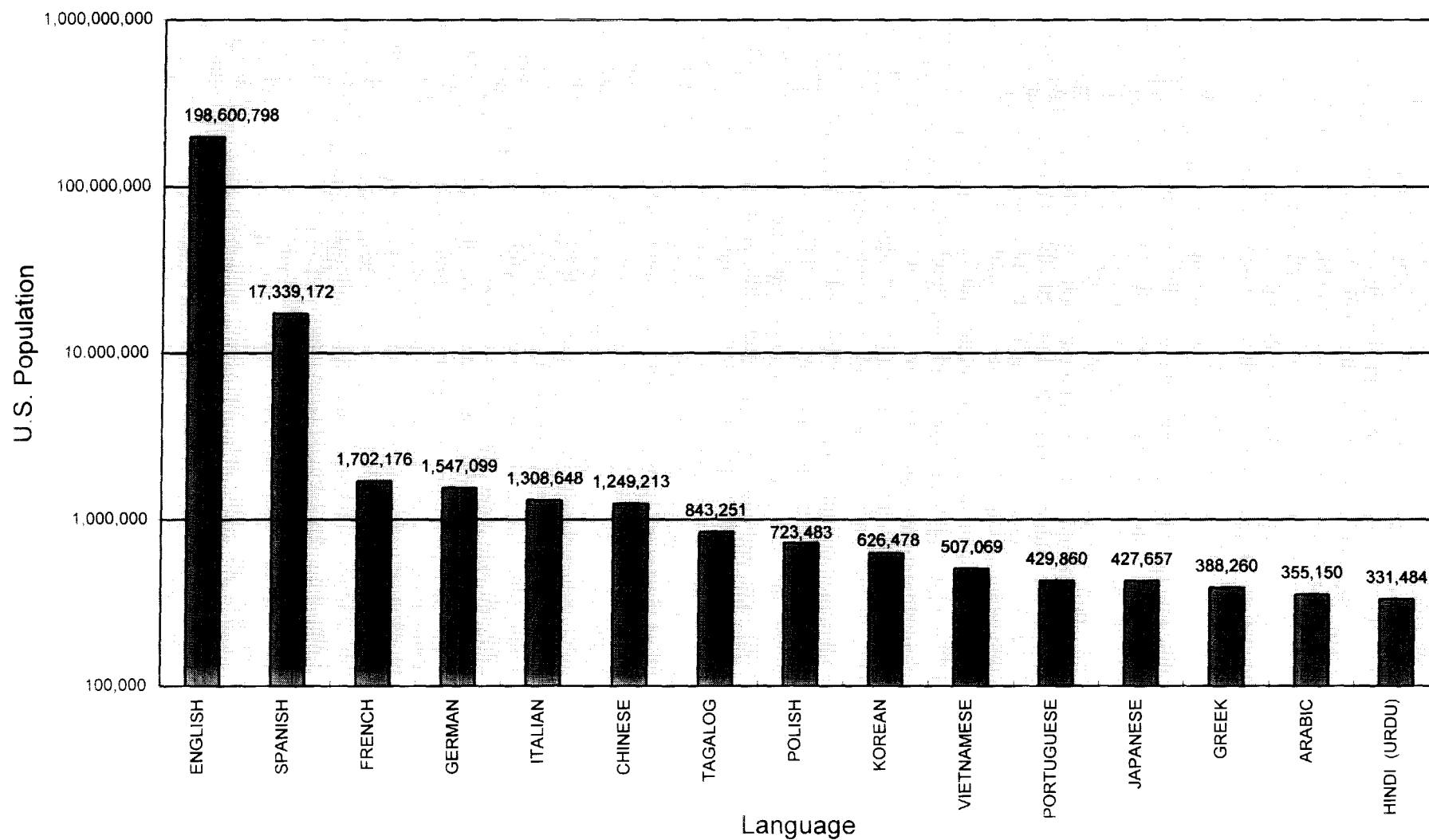
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Dated: October 13, 1998

## Language Spoken at Home



U.S. Bureau of the Census, 1990 Census of Population, CPHL-133, Table 5. "Detailed Language Spoken at Home and Ability to Speak English for Persons 5 Years and Over--50 Languages with Greatest Number of Speakers."